

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

CECIL DAWSON,

Plaintiff,

v.

Civ. No. 04-0259 JH/DJS

CHRISTOPHER S. HUESTON,
in his private capacity, and
RENEE M. HALE, in her
private capacity,

Defendants.

MEMORANDUM OPINION AND ORDER


This matter comes before the Court on *Defendant's Motion to Dismiss* (Doc. No. 10). On May 27, 2004, the Defendants filed their motion to dismiss this case in accordance with Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure. Plaintiff did not respond to that motion. Instead, on June 28, 2004 (more than one month later), Plaintiff filed his Motion for Protective Order, requesting that he be relieved of his duty to respond to the motion to dismiss until the Court ruled on the Motion to Remand, and that the Court strike the Motion to Dismiss and order the Defendants to refrain from filing additional motions. Under our Local Rules in this judicial district, Plaintiff's response to the motion to dismiss was due 14 days after it was served upon him. Not only did Plaintiff fail to respond to the motion to dismiss, but in addition he did not file his Motion for Protective Order until more than two weeks after his response was due.

However, in light of the fact that Plaintiff is proceeding *pro se* in this matter, the Court did not at that time deem the motion to dismiss to be unopposed. Instead, on December 9, 2004, the Court entered a Memorandum Opinion and Order affording Plaintiff an additional 14 days in which

to file and serve his response, if any, to the motion to dismiss. As of this date, Plaintiff still has failed to do so. Consequently, Defendant's motion to dismiss is unopposed and should be granted.

Furthermore, the Court finds that the motion should be granted on its substantive merits. As Defendants correctly point out, the United States is the proper defendant in the case, Plaintiff has not met his burden to demonstrate that the United States has waived its sovereign immunity, and in addition, Plaintiff's claims are barred by the Anti-Injunction Act.

IT IS THEREFORE ORDERED that Plaintiff's *Defendant's Motion to Dismiss* (Doc. No. 10) is GRANTED and Plaintiff's Complaint is DISMISSED.


UNITED STATES DISTRICT JUDGE